

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF NEW YORK

CHARLES J. MATTHEWS,

Plaintiff,

-v.-

9:06-CV-0896
(TJM)(GHL)

DOCTOR PAOLANO,

Defendant.

APPEARANCES:

OF COUNSEL:

CHARLES MATTHEWS

Plaintiff, *pro se*

NAPIERSKI, VANDENBURGH LAW FIRM
296 Washington Avenue Extension
Albany, NY 12203

SHAWN F. BROUSSEAU, ESQ.

THOMAS J. MCAVOY, SENIOR JUDGE

ORDER

Presently before the Court is a request from Plaintiff Charles Matthews ("Plaintiff" or "Matthews") to dismiss this action. Docket No. 11. The Defendants have responded to Plaintiff's Motion stating that they have no objection to Plaintiff's request but argue that the dismissal should be made with prejudice. Docket No. 12.

Plaintiff has not clearly indicated whether he wishes this action dismissed "with" or "without" prejudice. Assuming *arguendo* that Plaintiff requests dismissal of this action without prejudice, the Second Circuit has held that a "district judge may convert a dismissal sought to be entered without prejudice to one with prejudice." *Gravatt v. Columbia University*, 845 F.2d 54, 56 (2d Cir. 1988). However, the Second Circuit further instructs "that fundamental fairness requires interpreting Rule 41(a)(2) to afford the plaintiff an opportunity to withdraw his motion and proceed with the litigation in the event that a district

judge proposes to convert a voluntary dismissal to one with prejudice.” *Gravatt*, 845 F.2d at 56 (citing *Andes v. Versant Corp.*, supra, 788 F.2d 1033, 1037 (4th Cir. 1986)).

In light of the foregoing, the Court hereby advises Plaintiff that this action will be dismissed **with prejudice** unless Plaintiff notifies the Court **within thirty (30) days** from the filing date of this Order that Plaintiff objects to dismissal **with prejudice**. If after thirty days Plaintiff does not object to dismissal of this action with prejudice, Plaintiff’s Motion for Voluntary Dismissal will be granted, and this action will be dismissed **with prejudice**, without further order of this Court.

WHEREFORE, it is hereby

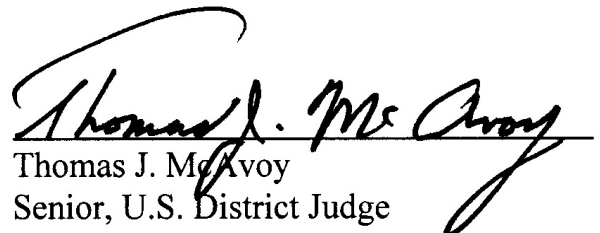
ORDERED, that the Clerk retain Plaintiff’s Motion for Voluntarily Dismissal (Docket No. 11) for **thirty (30) days** from the filing date of this Order. If the Plaintiff does not file an objection to dismissal of this action **with prejudice within thirty (30) days**, Plaintiff’s Motion for Voluntary Dismissal to will be granted and the Clerk shall dismiss this action **with prejudice**, without further Order of this Court, and it is further

ORDERED, that upon the filing of any objection by Plaintiff as set forth above within the time period set forth above, the Clerk is directed to forward the entire file on this matter to the Court for further review, and it is further

ORDERED, that the Clerk serve a copy of this Order on the parties in accordance with the Local Rules.

IT IS SO ORDERED.

Dated: September 5, 2007


Thomas J. McAvoy
Senior, U.S. District Judge

